

**BUSINESS REPORT**

**MONTANA HOUSE OF REPRESENTATIVES  
64th LEGISLATURE - REGULAR SESSION**

**HOUSE BUSINESS AND LABOR COMMITTEE**

**Date:** Friday, January 9, 2015  
**Place:** Capitol

**Time:** 8:00 AM  
**Room:** 172

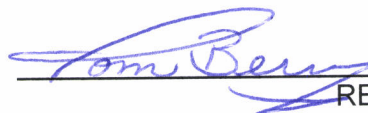
**BILLS and RESOLUTIONS HEARD:**

HB 79 - Exempt certain apprentices from licensure - Rep. Ryan Lynch  
HB 113 - Exclude certain vessel sales/parts persons & mechanics from overtime laws - Rep.  
Steve Fitzpatrick

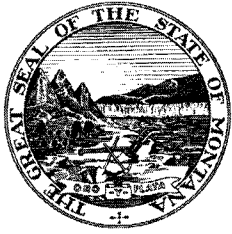
**EXECUTIVE ACTION TAKEN:**

HB 63	Do Pass
HB 113	Do Pass

**Comments:**



REP. Tom Berry, Chair



*The Big Sky Country*

**MONTANA HOUSE OF REPRESENTATIVES  
BUSINESS & LABOR COMMITTEE**

**ROLL CALL**

**DATE:** *January 9, 2015*

NAME	PRESENT	ABSENT/EXCUSED
REP. TOM BERRY, CHAIRMAN	✓	
REP. DANIEL SALOMON, VICE CHAIR	✓	
REP. RYAN LYNCH, VICE CHAIR	✓	
REP. CHRISTY CLARK	✓	
REP. WILLIS CURDY	✓	
REP. STEVE FITZPATRICK	✓	
REP. CHUCK HUNTER	✓	
REP. GEORGE KIPP III	✓	
REP. MIKE LANG	✓	
REP. DAVID (DOC) MOORE	✓	
REP. MARK NOLAND	✓	
REP. ANDREA OLSEN	✓	
REP. GORDON PIERSON	✓	
REP. CHRISTOPHER POPE	✓	
REP. VINCE RICCI	✓	
REP. TOM RICHMOND	✓	
REP. SCOTT STAFFANSON	✓	
REP. TOM STEENBERG		✓
REP. JEFFREY WELBORN	✓	

**19 MEMBERS**



## HOUSE STANDING COMMITTEE REPORT

January 9, 2015

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 63** (first reading copy -  
- white) **do pass as amended.**

Signed: *Tom Berry*  
Representative ~~Tom~~ Berry, Chair

**And, that such amendments read:**

1. Page 5, line 13.

**Following:** "[section]"

**Strike:** "5(3)"

**Insert:** "5(1)(c)"

- END -

**Committee Vote:**

**Yes 16, No 0**

Fiscal Note Required ☐

HB0063001SC.hbb

*OK*  
11:25  
1/9/15



## HOUSE STANDING COMMITTEE REPORT

January 9, 2015

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 113** (first reading copy -- white) **do pass**.

Signed: *Tom Berry*  
Representative ~~Tom~~ Berry, Chair

- END -

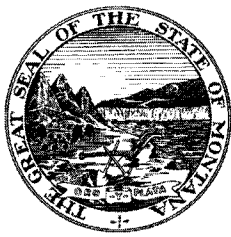
**Committee Vote:**

**Yes 10, No 9**

Fiscal Note Required ☐

HB0113001SC.hbb

cl  
11:25  
1/9/15



*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## BUSINESS & LABOR COMMITTEE

### ROLL CALL VOTE

BILL NUMBER HB 113

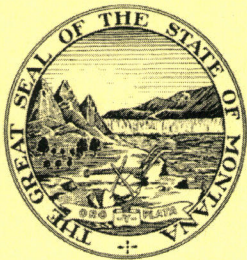
DATE Jan 9, 2015

MOTION do pass

NAME	AYE	NO	PROXY
REP. DANIEL SALOMON, VICE CHAIRMAN	✓		
REP. RYAN LYNCH, VICE CHAIRMAN		✓	
REP. CHRISTY CLARK	✓		✓
REP. WILLIS CURDY		✓	
REP. STEVE FITZPATRICK	✓		
REP. CHUCK HUNTER		✓	
REP. GEORGE KIPP III		✓	
REP. MIKE LANG	✓		
REP. DAVID (DOC) MOORE		✓	
REP. MARK NOLAND	✓		
REP. ANDREA OLSEN		✓	
REP. GORDON PIERSON		✓	
REP. CHRISTOPHER POPE		✓	
REP. VINCE RICCI	✓		
REP. TOM RICHMOND	✓		
REP. SCOTT STAFFANSON	✓		
REP. TOM STEENBERG		✓	✓
REP. JEFFREY WELBORN	✓		
REP. TOM BERRY, CHAIRMAN	✓		
10		9	

19 MEMBERS





*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## AUTHORIZED COMMITTEE PROXY

I request to be excused from the House Business & Labor

Committee because of other commitments. I desire to leave my proxy vote with:

Rep Salomon

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE

NO

HB 113	X	

BILL/AMENDMENT

AYE

NO


Rep.

(Signature)

Rep. Christy Clark

Date

Jan 9 2015











**HOUSE BUSINESS AND LABOR COMMITTEE**

**Sponsor: Rep. Ryan Lynch**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

## MONTANA House of Representatives Visitors Register

**Friday, January 9, 2015**

## HB 113 - Exclude certain vessel sales/parts persons & mechanics from overtime laws

**Sponsor: Rep. Steve Fitzpatrick**

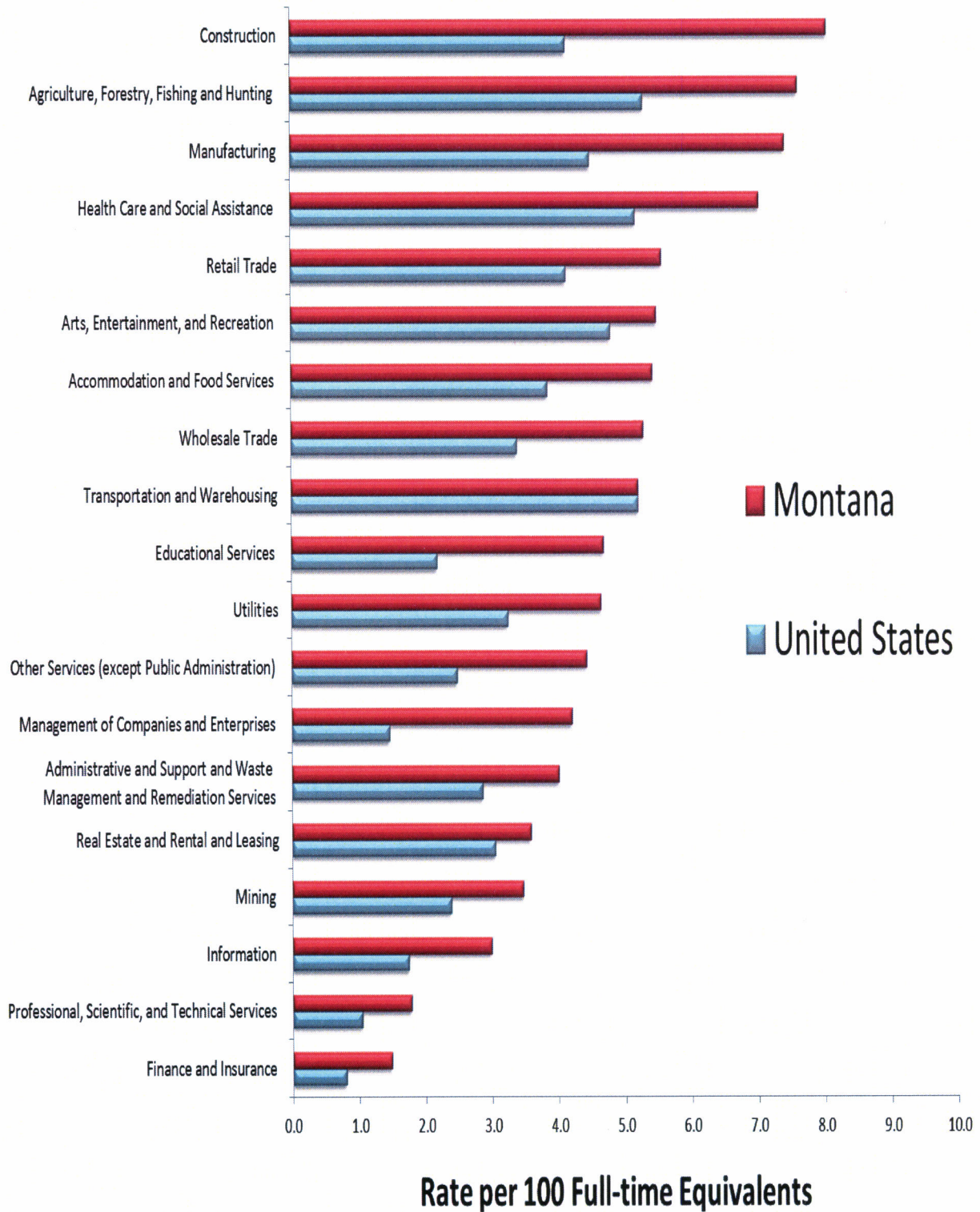
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# ADDITIONAL DOCUMENTS

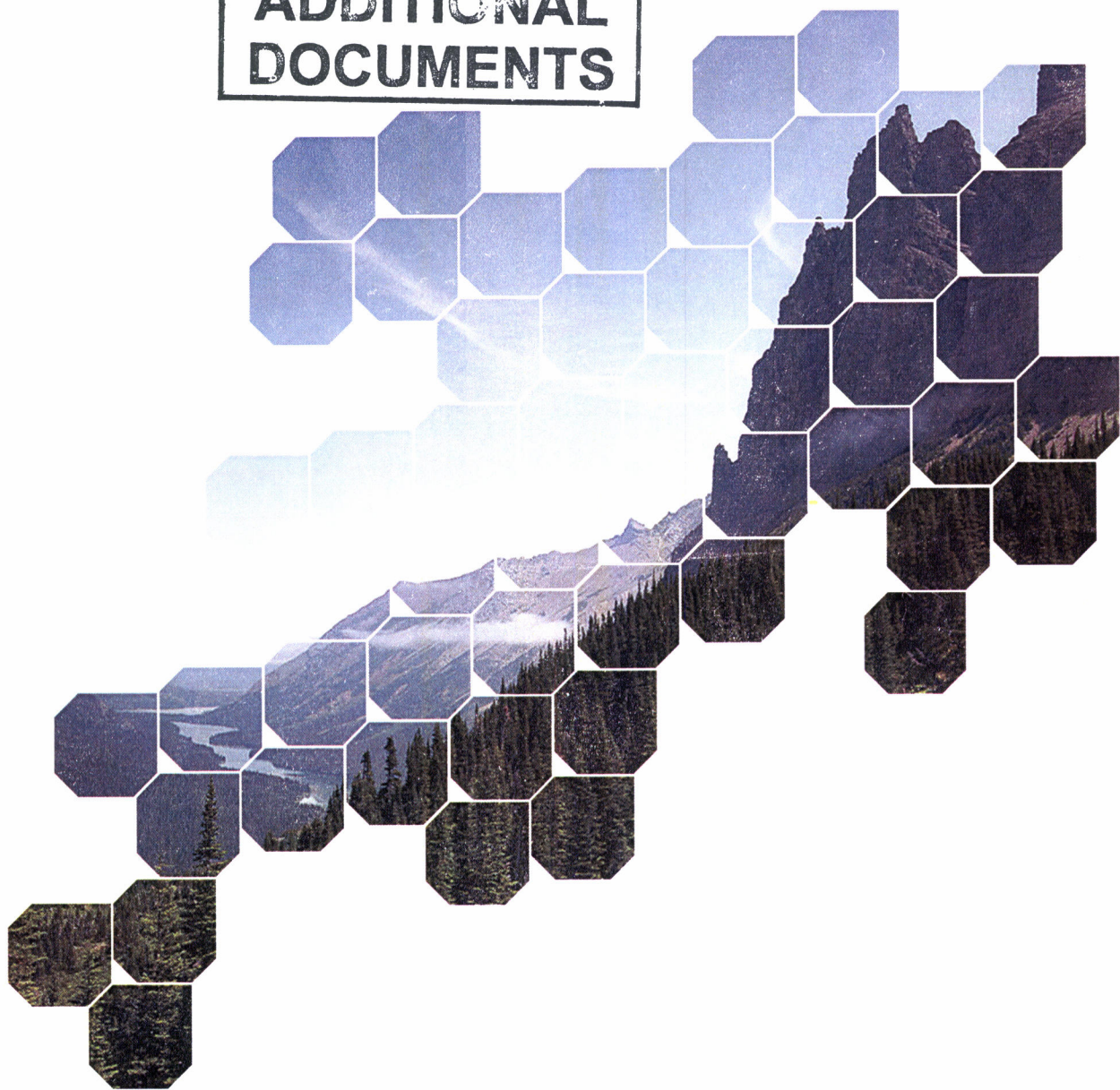
## Nonfatal Occupational Injury & Illness Incidence Rate By Private Industry, 5 year average 2008-2012



Source: Bureau of Labor Statistics 2014



**ADDITIONAL  
DOCUMENTS**

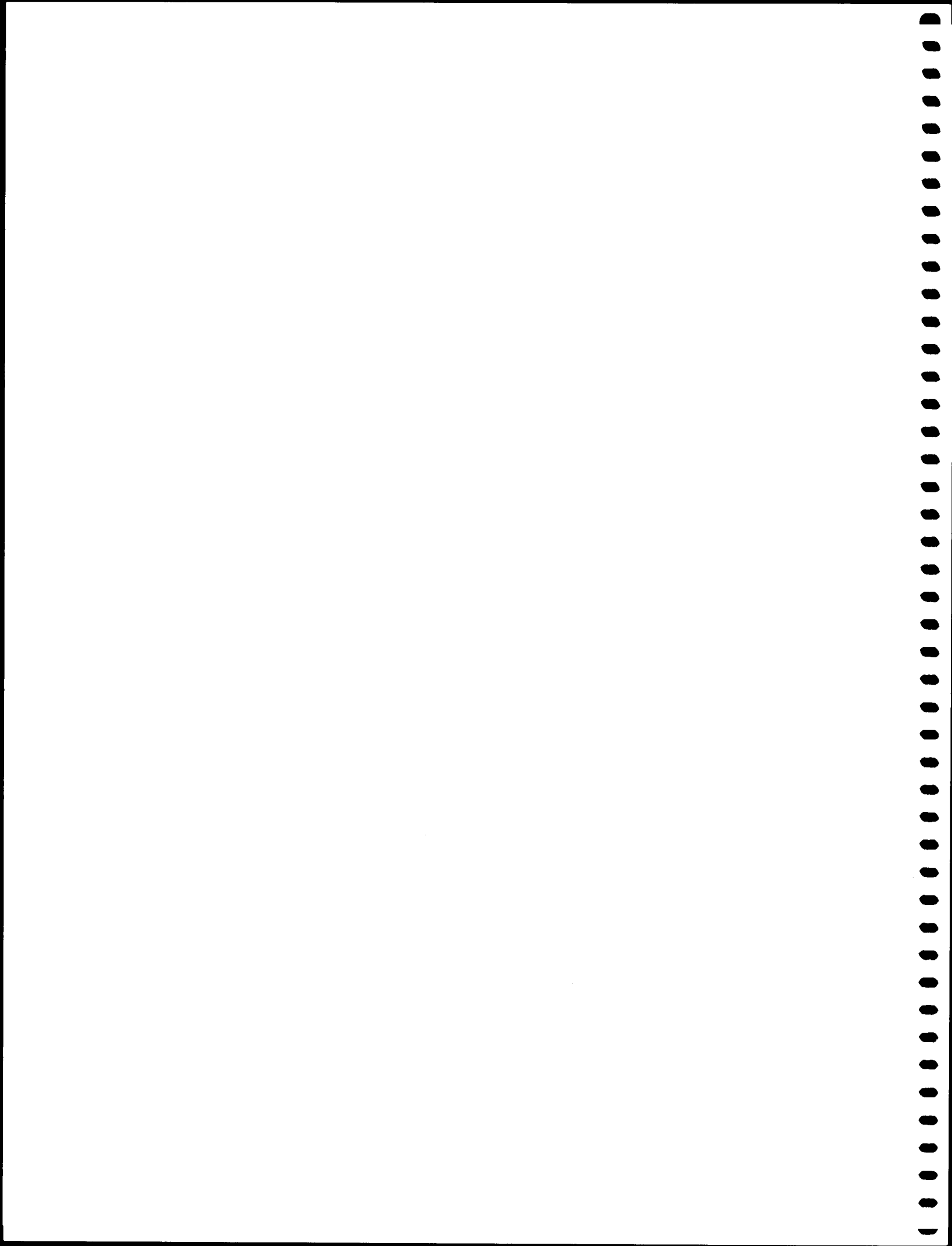


**2013**  
FISCAL YEAR

# **WORKERS' COMPENSATION ANNUAL REPORT**



Montana Department of  
**LABOR & INDUSTRY**  
Employment Relations Division

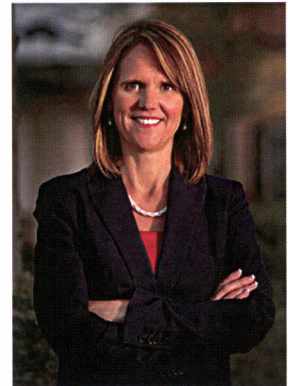


## COMMISSIONER'S INTRODUCTION



### Montana Department of **LABOR & INDUSTRY** Commissioner's Office

Governor Steve Bullock  
Commissioner Pam Bucy



Dear Colleagues and Fellow Montanans,

It is my honor to present the Workers' Compensation Annual Report for Fiscal Year (FY) 2013 to the Governor, the Legislature, and stakeholders in Montana's workers' compensation system. This report provides a detailed view of workers' compensation statistics and trends, as well as an overview of system activities and Departmental programs.

The Labor-Management Advisory Council (LMAC) has been productive over the past year. The Council listened to Department staff and to representatives from the National Council on Compensation Insurance (NCCI) report on preliminary findings from the 2011 reform; they have reached out and received feedback on workers' compensation in Montana from providers, employers and injured workers; and they have focused in on specific issues that will continue to have an impact on workers' compensation in Montana.

Montana's incident rate is still significantly above the national average and since it is considered a primary cost driver in workers' compensation, LMAC made focusing on safety initiatives a priority. A sub-committee was formed to analyze options and provide recommendations. LMAC, through the Safety Bureau and sub-committee, has begun a Ready to Work pilot project at high schools to train the next generation of Montana workers in a 10 hour OSHA course. In addition, LMAC is reviewing the option of moving to a state-based OSHA program.

NCCI recently reported to Montana stakeholders that loss cost rate level changes for Montana for FY 2015 would be -3.5% based on Montana's experience. According to NCCI, the cumulative change in lost costs from 2007-2014 was a -42.4%. Those changes have been reflected in lower premium payments for Montana employers.

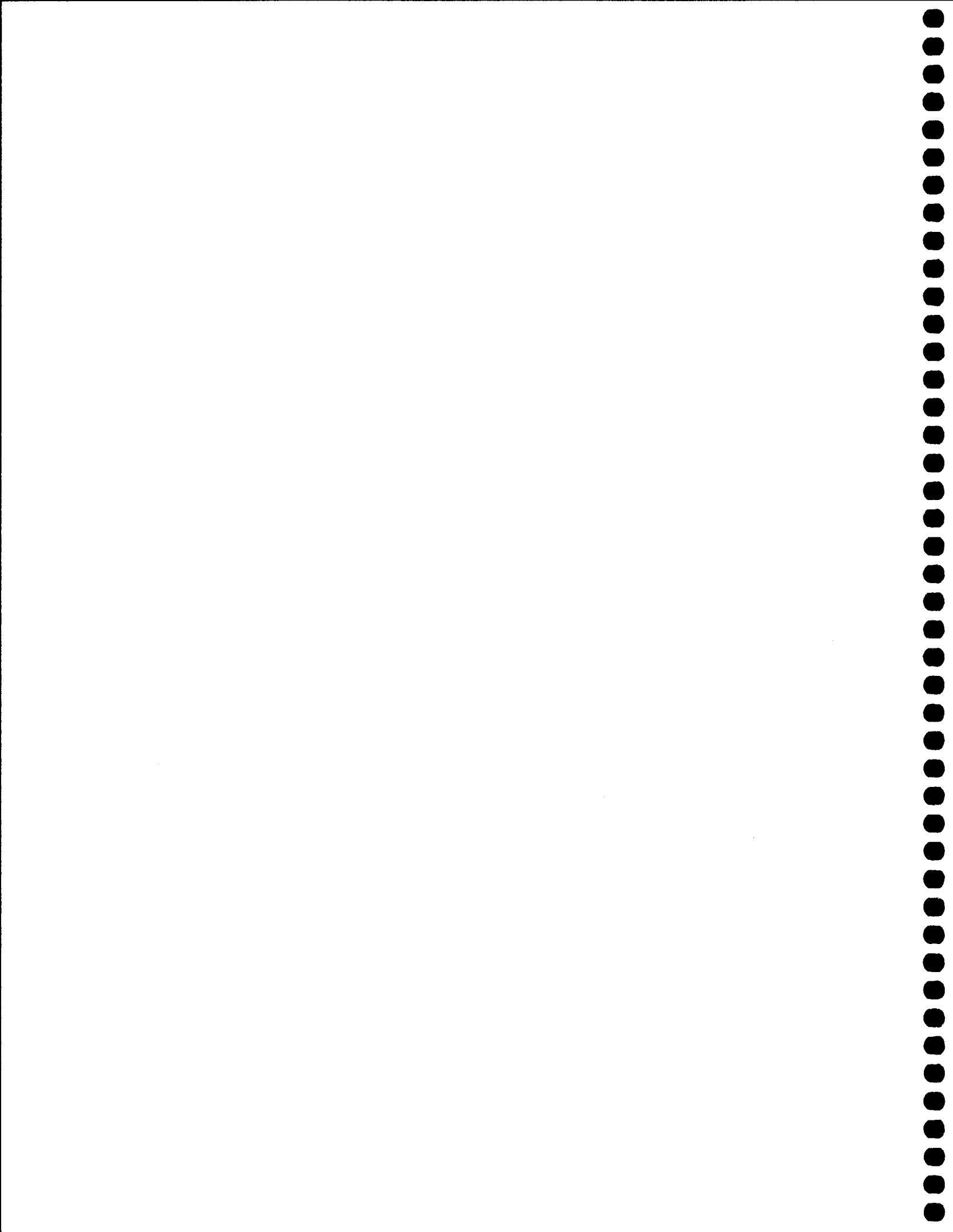
The number of reported claims continues to trend downwards, with a 2.7% decline from FY 2012 to FY 2013, and a 12.3% decline over the last four years. Total payments for medical and indemnity benefits remained almost unchanged from year to year. The Department continues to have fee schedules for the payment of medical services and is one of 44 states in the nation using this tool to contain the growth of medical spending.

There is so much more to share about our workers' compensation system than I can provide you in this brief introduction. I trust that you will find the enclosed report valuable in developing a deeper understanding of the trends and activities taking place in Montana's workers' compensation system and the positive results that come from the collaborative efforts of all stakeholders.

Sincerely,

Pam Bucy, Commissioner





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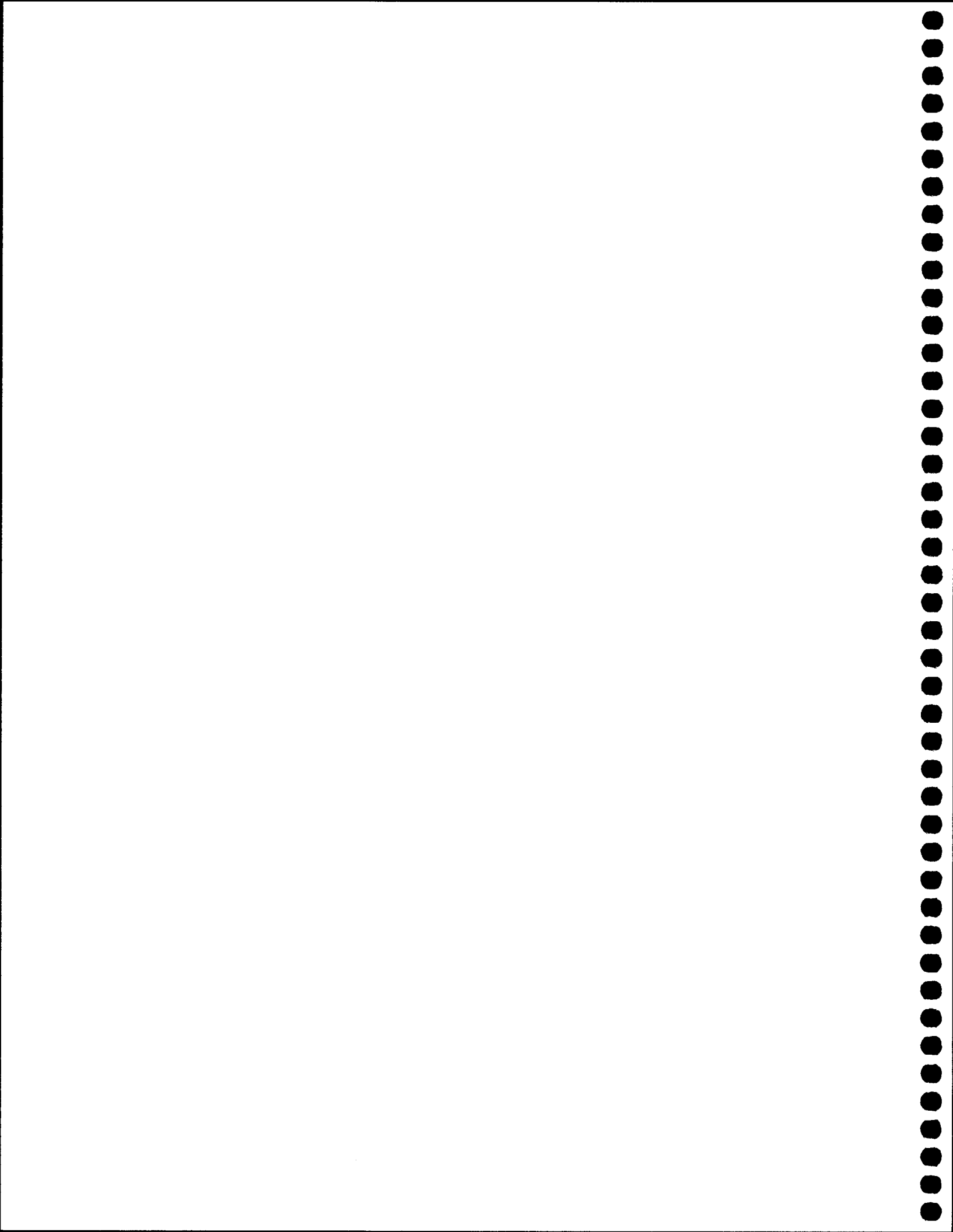
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## WORKERS' COMPENSATION HIGHLIGHTS

Montana and other states across the nation continue to monitor workers' compensation, including medical costs, injury and illness rates, system efficiency, and safety awareness, in an effort to reduce costs to employers, provide the best and appropriate care to injured workers, and reduce or eliminate work place injuries.

This report will provide the reader with an in-depth assessment of Montana's workers' compensation system, including system updates, claims and benefits characteristics, dispute resolution outcomes, and Department programs and their functions.

Selected workers' compensation claim highlights for FY13 include:

- Reported claims decreased 2.7%, to 24,950 claims;
- The BLS injury and illness incidence rate remained unchanged from FY11 and FY12, at 5.0 per 100 employees ;
- The most frequent causes of injury were Strains (33%), and Falls, Slips, and Trips (21%);
- The most frequent natures of injury were Sprains and Ruptures (43%), and Cuts and Abrasions (21%);
- Upper Extremities (32%) and the Back (18%) were the most frequent body parts injured;
- Total benefits paid remained stable, with medical paid increasing 2.0 % and indemnity paid decreasing 3.6%;
- Medical benefits comprised 63% of payments on FY13 indemnity claims;
- Temporary disability paid duration (1-year maturity) decreased from 15.0 weeks for FY11 injuries to 14.1 weeks for FY12 injuries;
- From April 2011 to February 2014, there were 899 settlements of medical benefits for best interest, with 77% of the settlements in the amount of \$30,000 or less; and
- Forty-three Independent Medical Reviews were performed by the Department's medical director in FY13, with 51% resulting in a decision of recommended, recommended with conditions, or recommended other guideline treatments.

Selected Employment Relations Division activities for FY13 include:

- Organized the annual Governor's Conference on Workers' Compensation and Occupational Safety and Health in Billings, attended by 312 persons.
- Staff made presentations on workers' compensation and stay at work/return to work at 15 Assistance for Business Clinics across the state and four SafetyFests in Billings, Great Falls, Lincoln and Missoula;
- Provided staff support and research for the Labor-Management Advisory Council (LMAC);
- Completed the first update to the medical fee schedule since the freeze from HB334;
- Updated the Medical Status form;
- Published the "FY12 Workers' Compensation Annual Report" and "Workers' Compensation Key Indicators" documents;
- Presented group and onsite training on workers' compensation statutory changes and program updates to adjusters, attorneys and other stakeholders;
- Staff actively participated in the International Association of Industrial Accident Boards and Commissions (IAIABC) through membership in working committees, including: EDI Council, EDI Claims, Research & Standards, Medical Issues and Disability Management; and
- Staff actively participated in National Institute for Occupational Safety and Health (NIOSH) and Council of State and Territorial Epidemiologists (CSTE) health surveillance committees.







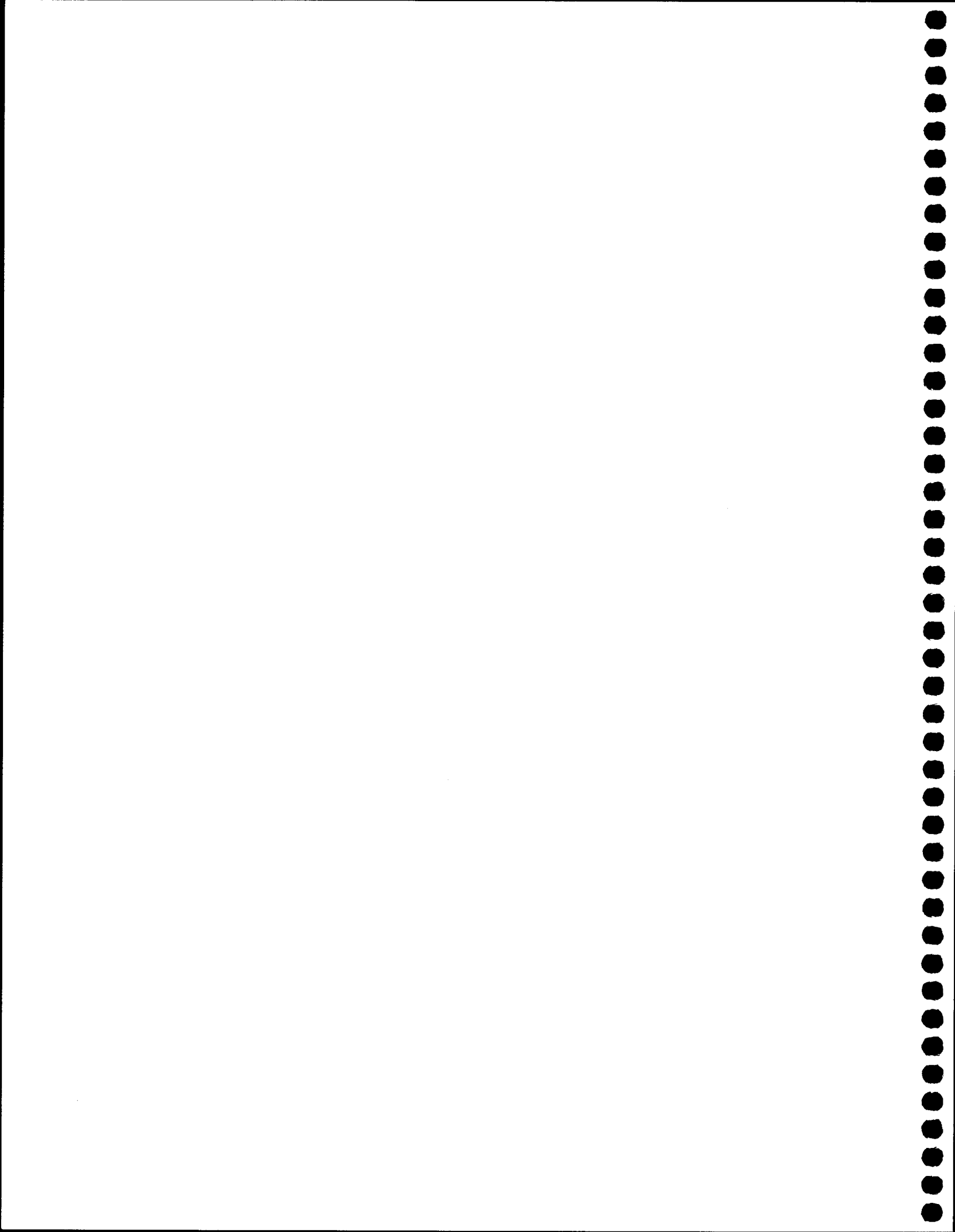
# SECTION

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## MONTANA WORKERS' COMPENSATION SYSTEM

- Declaration of Public Policy
- Labor-Management Advisory Council
- Insurance Coverage Requirements
- Life of a Claim
- Workers' Compensation Market





## DECLARATION OF PUBLIC POLICY

---

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage loss and medical benefits to a worker suffering from a work-related injury or disease. Wage loss benefits are not intended to make an injured worker whole, but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

It is the intent of the legislature to assert that a conclusive presumption exists which recognizes that a holder of a current, valid independent contractor exemption certificate issued by the Department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of workers' compensation unless the person elects personal coverage under one of Montana's workers' compensation three options for insurance.

A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapter 71, MCA must be construed according to its terms and not liberally in favor of any party.

The legislature's intent regarding stress claims, often referred to as mental-mental claims and mental-physical claims, is not to provide for compensation under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify

and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

(§39-71-105, MCA)

# LABOR-MANAGEMENT ADVISORY COUNCIL

The Labor-Management Advisory Council (LMAC) was recommissioned by the Department of Labor and Industry in June 2013. The goal of the LMAC is to provide a structure for an organized discussion of workers' compensation policy and to monitor the effectiveness of existing reforms. The LMAC will gather information, furnish advice, and make recommendations on workers' compensation to the Commissioner in order to facilitate education, promote mutual cooperation between labor and management and improve the workers' compensation system in Montana.

At the request of Governor Steve Bullock, the Lt. Governor chairs the LMAC. In 2013, the LMAC was chaired by Lt. Governor John Walsh. Lt. Governor Angela McLean will chair the LMAC for the remainder of the appointment.

The LMAC consists of 10 voting members and a subcommittee of five nonvoting members.

The five employer representatives on the LMAC are:

- Bill Dahlgren (Sun Mountain Sports)
- Annette Hoffman (St. Vincent's Healthcare)
- Riley Johnson (National Federation of Independent Business)
- Bob Worthington (Montana Self-Insurers Association)
- Lance Zanto (State of Montana Workers' Compensation Management Bureau)

The five labor representatives are:

- Doug Buman (Laborers' International Union of North America)
- Chris Cavazos (Montana AFL-CIO)
- Don Judge (Injured Workers Resource Council)
- Jim Larson (Teamsters Local 190)
- Al Smith (Montana Trial Lawyers Association)

The LMAC subcommittee members are:

- Bob Olsen (Montana Hospital Association)
- Jean Branscum (Montana Medical Association)
- Kevin Braun (Montana State Fund)
- Bonnie Lyytinen-Hale (Rehabilitation Association of Montana)

- Jacqueline Lenmark (American Insurance Association)

The LMAC's activities in 2013 focused on setting priorities for the upcoming year and establishing a work plan. In addition to evaluating the effect of the 2011 workers' compensation system reforms, the LMAC will work on identifying initiatives, efforts and methods to improve workplace safety and reduce injury rates. In December 2013, the LMAC formed a Safety Committee including representatives from the Montana University System, the Office of Public Instruction, Montana State Fund, and the Montana Chamber of Commerce.

The LMAC members continue to support WorkSafeMT, the private entity formed to direct and coordinate safety and return-to-work programs. Two LMAC members participate on the WorkSafeMT foundation board and committees.

LMAC meetings are open to the public and public comment is encouraged. For more information on the council, visit: <http://www.mtlmac.com>.

# INSURANCE COVERAGE REQUIREMENTS

If you are an employer or an employee, the Workers' Compensation and Occupational Disease Acts apply. An employer who has an employee in service under any appointment or contract of hire, expressed or implied, oral or written, must elect to be bound by the provisions of compensation Plan 1 (self-insured), Plan 2 (private insured), or Plan 3 (Montana State Fund).

**This information is intended to be descriptive. It is not all inclusive, nor is it intended to be used for legal determination of the mandatory coverage requirements.** Please contact The Employment Relations Division at 406-444-0564, or your workers' compensation insurer, concerning coverage requirements and/or excluded or exempted employments.

## EXCLUSIONS

The Workers Compensation Act may exclude from the definition of employee the services listed below:

- Volunteers
- Volunteers at recreational facilities receiving no compensation other than meals, lodging, or the use of the recreational facilities
- Licensed foster parents providing care for no more than 6 foster children without wage compensation
- Farm-owner occasionally assisting his or her neighboring farmers

(§39-71-118, MCA)

## EMPLOYMENTS EXEMPTED

The Workers' Compensation Act may not apply to the employments listed below:

- Household or domestic employment
- Casual employment
- Dependent member of an employer's family for whom an exemption may be claimed by the employer under the Federal Internal Revenue Code
- Sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company
- Real estate, securities or insurance salesperson paid solely by commission without a guarantee of minimum earnings

- A direct seller
- Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States
- A person performing services in return for aid or sustenance only, except employment of search and rescue volunteers
- Employment with a railroad engaged in interstate commerce, except railroad construction work
- An official, including a timer, referee, umpire or judge, at a school amateur athletic event
- A person performing services as a newspaper carrier or freelance correspondent if acknowledged in writing that the services are not covered
- Cosmetologist's services and barber's services
- A person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the reservation
- A jockey who is performing under a license issued by the Board of Horse Racing, from the time the jockey reports to the scale room prior to a race, through the time weighed out, and has acknowledged in writing that the jockey is not covered while performing services as a jockey
- Trainer, assistant trainer, exercise person or pony person who is providing services under the Board of Horse Racing while on the grounds of a licensed race meet
- An employer's spouse
- A petroleum land professional
- An officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company
- A person who is an officer or a manager of a ditch company
- Service performed by an ordained, commissioned or licensed minister of a church
- Providers of companionship services or respite care, if a family member or legal guardian employs the person providing care

## INSURANCE COVERAGE REQUIREMENTS

- A person performing services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meet the definition of a broker or freight forwarder
- A person who is not an employee or worker in Montana
- Independent Contractors, who maintain a current, valid, independent contractor exemption certificate from the Department
- An athlete employed by or on a team or sports club engaged in a contact sport
- A musician performing under a written contract

(§39-71-401, MCA)